IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

MFA.No. 572 of 2002(B)

O.P(M.V).216/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM DATED 04/01/2001.
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APPELLANT/4TH RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LIMITED, THIRUVANANTHAPURAM, NOW REPRESENTED BY ITS ASSISTANT MANAGER, REGIONAL OFFICE, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB.

RESPONDENTS/PETITIONERS:
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1. **G. VASANTHI, W/O. LATE SASIDHARAN NAIR, VASANTHI VIHAR, HOUSE NO.KP-2/114, KARIKKAKOM, BEACH P.O., THIRUVANANTHAPURAM.**
2. **BIJU S. NAIR, S/O. LATE SASIDHARAN NAIR, DO. DO.**
3. **BINU S. NAIR (MINOR), LATE SASIDHARAN NAIR, DO. DO.**
4. **RAMAKRISHNA PILLAI, S/O. LATE PARAMESWARAN THAMPI, DO. DO.**

prv.

M.F.A. NO. 572/2002:

5. KAMALAKSHI AMMA,
W/O. RAMAKRISHNA PILLAI, DO. DO.
(MINOR 3RD RESPONDENT IS REPRESENTED BY HIS MOTHER 1ST RESPONDENT).

BY ADV. SRI.J.HARIKUMAR.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

ORDER ON C.M.P. NO. 3821/2002 IN M.F.A. NO. 572/2002-B

DISMISSED

SD/- J.B.KOSHY, JUDGE.

31/07/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.572 OF 2002

Dated 31st July, 2007

JUDGMENT

Koshy,J.

One Sasidharan Nair died in a motor accident on 9.9.1998. His dependants (wife, children and parents) filed an application for compensation of Rs.21,00,000/=. Tribunal found that the accident occurred due to the negligence of the vehicle insured by the appellant insurance company. This appeal is filed by the insurance company questioning the quantum of compensation. Salary certificate of the deceased shows that his total salary was Rs.7,310/=. He was aged 46 and employed as watchman in the Food Corporation of India at the time of accident. Taking into account future prospects, the Tribunal fixed monthly income at Rs.9,444/- applying the formula in ***K.S.R.T.C.*** v. ***Susamma Thomas*** (1994 ACJ 1). It is true that since he was employed in Food Corporation of India, a Government undertaking, there may be likelihood of wage revisions, increments etc., but, vagaries of life cannot be predicted. So, maximum salary that can be fixed is only Rs.8,000/=. From that one third has to be deducted for personal expenses. Then, monthly loss of dependency will be

Rs.5,334/=. If that be so, compensation payable for loss of dependency will be Rs.8,32,104/=. Insurance company also in ground 3 stated as follows:

> "3. The peculiar calculation for the loss of dependency made by the Tribunal is not sustainable. Even the monthly income stated in the claim petition is only Rs.8000/-and if one-third is deducted for the personal expenses, the balance will come to Rs.5,334/-. By applying a multiplier of 13, the amount will come to only Rs.8,32,104/-. Therefore the amount granted by the Tribunal is highly excessive and without any basis."

We accept the above contention. Tribunal has granted Rs.14,500/= towards funeral expenses, transport expenses, pain and suffering, damages to scooter, hospital expenses etc. We are of the opinion that no reduction is required in the above amount. Thus, total compensation payable will be Rs.8,46,604/=. Tribunal has calculated a total compensation of Rs.14,87,764/=, but, awarded an amount of Rs.14,00,000/= with 12% interest and proportionate costs. We have found that total compensation payable will be Rs.8,46,604/=. The award was passed in 2004. Rate of interest at that time was only 9%. In the above

circumstances, the claimants are entitled to an amount of Rs.8,46,604/= with 9% interest from the date of application till the date of deposit and proportionate costs. Balance amount after deducting the amount already paid should be deposited by the appellant insurance company. Since the incident occurred in 1998, out of the amount, Rs.1,00,000/= should be disbursed to respondents 4 and 5 and balance shall be disbursed to respondents 1 to 3 in equal proportion.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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